

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JEREMY CANTRELL CONN,)	
)	4:03cv3237
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	and
)	AMENDMENT TO
BOBIE TOUCHSTONE, et al.,)	PROGRESSION ORDER
)	
Defendant.)	

This matter is before the court on filing nos. 78 and 79, the Motions by the remaining defendants in this action, Andrew Kenon and Niel Thomas, to amend the court's Progression Order (filing no. 54) in light of the defendants' retention of substitute counsel. Filing nos. 78 and 79 are granted as set forth below.

In their Answers to the plaintiff's Complaint, the defendants assert that the Complaint fails to state a claim on which relief may be granted as to them and that they are entitled to qualified immunity (filing nos. 68 and 69). These are preliminary matters which should be determined before the case progresses beyond the present stage of the litigation.¹

THEREFORE IT IS ORDERED:

1. That filing nos. 78 and 79 are granted;
2. That the defendants shall file a Motion to Dismiss based on failure to state a claim on which relief may be granted, qualified immunity and any other ground(s) the defendants may wish to raise, supported by a brief, by no later than August 22, 2005;
3. That the plaintiff shall have until no later than September 22, 2005 to file a brief in response to the defendants' Motion; and

¹See, e.g., Gainor v. Rogers, 973 F.2d 1379, 1383 (8th Cir. 1992) ("Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery."). See also Technical Ordnance, Inc. v. United States, 244 F.3d 641, 646-47 (8th Cir. 2001) ("Qualified immunity issues should be resolved as early as possible because one of the purposes of qualified immunity is to protect public officials from disruptive 'broad-ranging discovery.'").

4. That the court's Progression Order (filing no. 54), is amended as set forth in this Memorandum and Order and may be further amended, as appropriate, after resolution of the defendants' Motion to Dismiss.

DATED this 22nd day of July, 2005.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge